IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

AS.No. 389 of 1993()

OS.124/1990 of ADDITIONAL SUB COURT, KOLLAM

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APPELLANT: PLAINTIFF:

K.G.PURUSHOTHAMAN, S/O.GOVINDAN,
KACHIEL PUTHEN VEEDU, CHARUMOODU,
KAYAMKULAM.

BY ADV. SRI.S.ANANTHASUBRAMANIAN
SRI.S.SHYAM
SRI.N.SUKUMARAN

RESPONDENTS: DEFENDANT:

N.RAJAN, VILAKKUMTHARA VEEDU,
PALLITHOTTAM, KAYAMKULAM.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S.No. 389 of 1993

Dated this the 5th July, 2007.

J U D G M E N T

The plaintiff in O.S.No.124/1990, on the file of the Sub Court, Kollam, is the appellant. This appeal is filed against the judgment and decree passed by the court below, dismissing the suit filed by the appellant for recovery of money based on a promissory note.

2. The appellant filed a suit for recovery of Rs.71,000/= with interest at the rate of 12% per annum. It was averred that respondent received an amount of Rs.71,000/= after executing a promissory note on 23.5.1987. It was also averred that the promissory note was supported by consideration. It was averred that in spite of repeated demands, respondent did not pay the amount. Lawyer notice was issued to which respondent sent a reply, denying the execution of promissory note. Hence, the suit for recovery.

3. Defendant filed a written statement contending that the plaintiff was not entitled to get any amount. It was contended that he did not execute any promissory note either on 23.5.1987 or on any

other date, in favour of the plaintiff. It was also contented that promissory note was not supported by consideration. It was contented that plaintiff was a Abkari Contractor and the defendant was the owner of a Hotel, by name, Hotel Raja International. It was contended that during June 1990-93, the plaintiff took the hotel premises for conducting a Bar, agreeing to pay a premium of Rs.60,000/= per year. One year's premium was paid in advance, signed certain blank papers, so as to enable the plaintiff to file petitions before the appropriate authorities for getting a Bar licence. It was averred that the plaintiff did not succeed in obtaining the licence. So, he surrendered the premises after 11 months. But the defendant paid only an amount of Rs.5000/= back to the plaintiff after adjusting Rs.55,000/= towards the premium. It was averred that the plaintiff made an demand to the defendant that he shall repay Rs.55,000/= also and sent a letter on 5.2.1988, demanding Rs.55,000/=. He did not oblige. The appellant fabricated the promissory note and filed the suit.

4. Plaintiff was examined as PW.1, and Exts.A1 to A5 were marked on his side. Exts.D1 and D2 were marked on the side of the defendant. He gave evidence as DW.1. The Trial Court, after

appreciating the evidence, found that the promissory note was not supported by any consideration, and dismissed the suit. Challenging that decree and judgment, this appeal is filed.

5. The learned counsel appearing for the appellant has argued that Ext.A1 promissory note will show that the respondent has received an amount of Rs.71,000/=. It contains the signature and is written in the letter head of the respondent. It is also argued that there is no denial of signature. It is argued that since the execution is not denied, the burden was on the respondent to prove that promissory note was not supported by consideration. It was averred that there were two transactions in which the defendant received an amount of Rs.60,000/= as advance for the premises, and another Rs.50,000/= promising that such amount was required for obtaining a Bar licence in the name of the plaintiff. According to him, the respondent refused to execute a lease deed, but promised to get a licence, and hence the plaintiff gave an amount of Rs.50,000/= for getting a licence, and that is borne out by Ext.A5 receipt.

6. At the time of trial, plaintiff developed a case that the appellant received an amount of Rs.50,000/= on 23.1.1983 under Ext.A5 receipt, and Ext.A1 promissory note was executed for the amount covered by Ext.A5 with 12% interest per annum. Ext.A5 shows that it was a transaction which took place on 23.5.1987. There is no averment in the plaint that the defendant received an amount of Rs.50,000/= on 28.1.1983, and when plaintiff made a demand for repayment, the defendant executed Ext.A1 promissory note. In the suit notice issued also, there was no such case. When PW.1 was confronted with Ext.A1, he deposed that he did not know, who typed it or from where. He deposed that the respondent brought the promissory note type written and handed over to him. Ext.A5 produced by the plaintiff itself shows that the defendant can read and write not only Malayalam but also English. The letter head shows that he is a graduate. Ext.A5 is written in the hand writing of the defendant. So, there is absolutely no necessity for the defendant to get a type written promissory note. Its spacing and typing of the name above signature all indicate the case of the defendant that such a promissory note was fabricated subsequently in a paper containing signature, is not improbable. It is also very pertinent to note that almost every important points have been proved by putting leading questions to

PW.1. The space between the lines in the promissory note is also very relevant. It is also seen that on either side of the note, margin was left.

7. Taking into account all these aspects, the Trial Court held that there was no valid consideration for the promissory note and it was created for the purpose of filing the suit, and dismissed the same. This is a finding of fact based on good evidence. I do not find any reason to interfere with that findings of fact entered into by the court below. So, the appeal is only to be dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

A.S.No. 389 of 1993

J U D G M E N T

Dated:5th July, 2007.